

LEGISLATIVE AUDIT DIVISION

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MEMORANDUM

TO: Legislative Audit Committee Members

FROM: Jim Pellegrini, Deputy Legislative Auditor, Performance Audits

DATE: February 28, 2001

RE: **Follow-up to Performance Audit:
Safety Bureau
Employment Relations Division
Department of Labor and Industry (97P-04)**

INTRODUCTION

In December 1998, we presented a performance audit of the Safety Bureau to the Legislative Audit Committee. The audit was conducted at the request of the Department of Labor and Industry and was authorized by the Legislative Audit Committee. The report contained seven recommendations to the Department of Labor and Industry. We requested and received information from the department on their progress in implementing the recommendations in January 2000.

To complete the follow-up of the audit, we interviewed division management, Safety Bureau staff, Information Technology staff and Department of Environmental Quality staff. We also reviewed legislative changes, draft legislation and other pertinent bureau documents.

In addition to summarizing the results of our follow-up work, this memorandum presents background on the Safety Bureau operations and changes that have taken place since the audit.

SUMMARY OF FOLLOW-UP RESULTS

The following table shows the status of recommendations made in our 1998 report.

<u>Recommendation Status</u>	
Implemented	5
Being Implemented	<u>2</u>
Total	7

As the above table illustrates, the bureau has initiated positive efforts to address most audit recommendations. The department is working towards the implementation of two recommendations proposed to assist in the planning, prioritization, and assessing of the bureau's operations. No final implementation date has been established for these recommendations.

We recommend another brief follow-up be completed in approximately one year to evaluate implementation of the recommendations that are in the process of being implemented.

BACKGROUND ON SAFETY BUREAU

As a part of the Employment Relations Division of the Department of Labor and Industry, the Safety Bureau is responsible for administering the state's occupational safety and health laws. Administration of the laws includes ensuring Montana's public sector employers and mines comply with occupational safety and health codes. Responsibilities of the bureau include mandatory safety inspections of public sector employers (cities, counties, state government agencies, and schools), consultations with private sector employers, and inspections of coal mines and sand and gravel operations. The bureau's primary goal is to minimize employee injuries and illnesses and reduce workers' compensation premiums.

FOLLOW-UP FINDINGS

The following sections provide the implementation status of each recommendation based on follow-up work performed by the Legislative Audit Division.

Training Plan for Mine Inspection Staff

Audit work found significant differences in the amount of training received by safety inspectors and industrial hygienists and the mine inspectors. The bureau's safety inspectors and industrial hygienists receive an average of approximately 70 hours of training each year. Conversely, the mine inspectors received an average of just over 12 hours of training per year. The bureau had a training plan for safety inspectors, but not for the mine inspectors.

Prior Recommendation #1

We recommend the Safety Bureau develop a training plan for the mine inspection staff.

This recommendation is implemented.

Safety Bureau increased the amount of training for the mine inspection supervisor and staff in fiscal years 1998-99 and 1999-00. According to management, the training received was based upon each individual's responsibilities and the latest standards issued by Mine Safety and Health Administration (MSHA). The safety bureau developed a training plan and training budget for the mine inspectors at the time of this follow-up.

Modification of Workers' Compensation Database and Use of Data to Help Prioritization

The most effective method to inspect employers for compliance with safety and health codes is to focus on those with high rates of injuries or illnesses and targeting employers with a level of high risk. The bureau did not have an effective system in place to identify the highest risk employers.

Prior Recommendation #2

We recommend the Employment Relations Division:

- A. *Modify information on the workers' compensation database so the highest risk public employers, sand and gravel operations, and mining activities can be identified.*
- B. *Provide data to the Safety Bureau so it can assess occupational injury and illness rates for public employers and mines to help prioritize which entities and activities should be inspected.*

This recommendation is being implemented.

The Department of Labor and Industry maintains a workers' compensation database that could be used as a resource to help set inspection priorities. The Employment Relations Division Administrator and Safety

Bureau Chief plan to meet with self-insured workers' compensation groups by July 31, 2001, to coordinate the development of location codes for reported injuries. The location codes will allow for the compilation of injuries, by location, and ultimately provide the bureau with the necessary information to prioritize inspections. At the time of this follow-up, the Information Technology Unit has this project on their list of priorities; however, an estimated time for completion of the recommendation could not be determined.

Communication with Workers' Compensation Insurers and Other Agencies

Audit work identified minimal communication and coordination between the Safety Bureau, workers' compensation insurers, Department of Environmental Quality (DEQ), and Montana Department of Transportation (MDT). Communication with these groups could help the bureau ensure inspections of high-risk employers are completed.

Prior Recommendation #3

We recommend the Safety Bureau:

- A. *Establish a formal process to communicate with workers' compensation insurers on an on-going basis.*
- B. *Coordinate with the DEQ and MDT to help identify the location of mobile sand and gravel units operating in the state.*

This recommendation is implemented

The Safety Bureau Chief participates in quarterly meetings with the State Fund. In addition, the Safety Bureau meets with the private and self-insurers on an annual basis. According to the Bureau Chief, the meetings are well attended and resulted in improved communications with the insurers. A staff member with DEQ sends the bureau a listing of sand and gravel operators and their locations. Inspectors use the list when planning inspections of the operations. Communication with the MDT is informal as DEQ passes the same information provided to the Safety Bureau on to MDT.

Management Information System

Strategic planning is an important aspect of program operations and helps define a program's purpose, direction, and impact. Audit work found the Safety Bureau did not incorporate a planning process into its safety consultation and mine inspection programs. Furthermore, the bureau did not maintain management information that would help assess its impact and effectiveness.

Prior Recommendation #4

We recommend the bureau develop a comprehensive management information system which will provide a means for improving its strategic planning process and measuring the effectiveness of its operations.

This recommendation is being implemented.

The bureau has requested the division's Information Technology Unit initiate programming of the database to compile management information that could help improve its strategic planning and measure its effectiveness. According to management, programming of their system will be concurrent with the injury/illness and risk information mentioned in recommendation #2 above. No implementation date has been set.

Organizational Structures and Staff Responsibilities

Over the years, several changes have occurred within the bureau and with safety statutes. For example, the 1997 Legislature reduced the bureau's authority over metal and nonmetal mine inspections. In addition, certain programs have been eliminated from the bureau such as the logging and boiler inspection programs. At the same time, the bureau has become more active in areas such as safety training and on-site consultations. Audit work identified wide variances in staff workload for different types of inspection staff.

Prior Recommendation #5

We recommend the Department of Labor and Industry review the organizational structure and staff responsibilities of the Safety Bureau to determine how resources can be used more efficiently.

This recommendation is implemented.

The bureau formally reviewed the mandatory inspection process to determine more effective and efficient methods to perform the process. The bureau also kept a mine inspector position vacant while staffing needs were evaluated. The bureau determined that current increased federal funding for highway improvements and construction will drive the need to ensure the sand and gravel operations are inspected in a more timely manner. The bureau was able to hire additional staff because of an increase in the OSHA on-site consultation grant and the reassignment of responsibilities for the Montana Occupational Health Act.

Legislative Authority to Administer Occupational Health Act

The purpose of the Occupational Health Act (OHA) is to ensure employers provide a workplace that protects the health of its employees and requires a system to be in place that ensures employers comply with the act. Statute requires a coordinated statewide program of abatement and control to ensure Montana's policy for a safe and healthy work environment is enforced. However, two different agencies with two different missions were responsible for enforcing occupational safety and occupational health laws. State law delegated administration of the OHA to the Department of Environmental Quality (DEQ) and required the Safety Bureau to refer any occupational health hazards they identify to DEQ.

The delegation of these laws created a fragmented system for enforcing laws related to occupational safety and occupational health. The fragmentation led to inefficient and inconsistent enforcement of laws and created confusion over who has authority for enforcement.

Prior Recommendation #6

We recommend the Department of Labor and Industry seek legislation to obtain authority to administer the Occupational Health Act.

This recommendation is implemented.

Chapter #225 (SB 21) passed during the 1999 Legislative Session gave responsibility to the Safety Bureau for the Occupational Health Act effective July 1, 1999.

Legislative Clarity of Enforcement Role with Safety Culture Act

The purpose of the Safety Culture Act (SCA) is to reduce the incidence of occupational illness and injury by promoting safety in the workplace and to control the costs of claims for workers' compensation insurance. Audit work found the bureau was not clear with its role in administering the SCA.

Prior Recommendation #7

We recommend the Department of Labor and Industry seek legislation to clarify the Safety Bureau's role in enforcing the requirements of the Safety Culture Act.

This recommendation is implemented.

Shortly after issuing the audit report, a proposal was made by the bureau to implement clarification of its role in enforcing the Safety Culture Act through Administrative Rule. Upon review of the statutory rule making authority of the department, it was determined legislation would be necessary. The department submitted legislation for consideration in the 2001 Legislature. Senate Bill 32 will authorize the Safety Bureau to issue safety recommendations to employers who fail to comply with the provisions of the Montana Safety Culture Act or with Administrative Rules adopted by the department.